February 22, 2002

ENGROSSED
SENATE BILL No. 71

DIGEST OF SB 71 (Updated February 20, 2002 10:22 AM - DI 96)

Citations Affected: IC 20-8.1; IC 22-3; IC 22-4; noncode.

Synopsis: Various labor matters. Changes the requirement that a child working at least six consecutive hours be provided a rest break of at least 30 minutes to a requirement that a child working at least eight consecutive hours be provided one or more rest breaks totaling at least 30 minutes. Removes the specified period of time during a child's work day in which the child must be provided a rest break. Provides that a child less than 18 years of age working between the hours of 10 p.m. and 6 p.m. must be accompanied during those hours by another employee at least 18 years of age if the establishment is open to the public. Reduces worker's compensation to an employee by 15% for failure to use certain safety appliances or failure to obey certain safety requirements (instead of denying compensation altogether). Establishes work sharing unemployment compensation benefits. Provides workers compensation benefits to an employee who was traveling to or from or engaged in the duties of employment at the time of a terrorist attack and was injured or died as a result of the attack. Makes conforming amendments.

Effective: July 1, 2002.

Harrison, Alting

(HOUSE SPONSORS — WEINZAPFEL, WHETSTONE, SCHOLER, KLINKER)

January 7, 2002, read first time and referred to Committee on Pensions and Labor.
January 28, 2002, reported favorably — Do Pass.
February 1, 2002, read second time, amended, ordered engrossed.
February 4, 2002, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Labor and Employment.
February 21, 2002, amended, reported — Do Pass.

February 22, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED
SENATE BILL No. 71

A BILL FOR AN ACT to amend the Indiana Code concerning labor.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 20-8.1-4-20.5, AS ADDED BY P.L.122-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 20.5. (a) Except as provided in subsection (b), this section applies to occupations for which a child less than eighteen (18) years of age may be employed or allowed to work under this chapter but does not apply to children subject to:

(1) section 2 of this chapter; or

(2) section 20(m)(2) or 20(m)(3) of this chapter.

~~(b) This section does not apply to a child less than eighteen (18) years of age employed by a camp or other facility that:~~

~~(1) provides an opportunity, either gratuitously or for compensation, for outdoor group living for all or any part of a day;~~

~~(2) provides recreational, health, educational, or sectarian related activities; and~~

~~(3) is operated by a nonprofit entity.~~

~~(c)~~ **(b)** A person, firm, limited liability company, or corporation that employs a child less than eighteen (18) years of age shall provide ~~a~~ **one**

(1) or more rest ~~break of~~ **breaks totaling** at least thirty (30) minutes to a child who is scheduled to work at least ~~six (6)~~ **eight (8)** consecutive hours.

~~(d) The rest break must be available to the child during the time beginning three (3) hours after and ending five (5) hours after the child begins the child's period of duty.~~

SECTION 2. IC 20-8.1-4-25.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 25.5. (a) This section does not provide an exception to the hours a child is permitted to work under section 20 of this chapter.**

(b) It is unlawful for a person, firm, limited liability company, or corporation to permit a child who is:

(1) less than eighteen (18) years of age; and

(2) employed by the person, firm, limited liability company, or corporation;

to work after 10 p.m. and before 6 a.m. in an establishment that is open to the public unless another employee at least eighteen (18) years of age also works in the establishment during the same hours as the child.

SECTION 3. IC 20-8.1-4-31, AS AMENDED BY P.L.122-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. (a) A person, firm, limited liability company, or corporation that violates this chapter may be assessed the following civil penalties by the department of labor:

(1) For an employment certificate violation under section 1 or 13 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars ($50) per instance for a second violation identified in a subsequent inspection.

(C) Seventy-five dollars ($75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars ($100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars ($50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars ($75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars ($100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(3) For a termination notice violation under section 11 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars ($50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars ($75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars ($100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(4) For an hour violation of not more than thirty (30) minutes under section 20 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars ($50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars ($75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars ($100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(5) For an hour violation of more than thirty (30) minutes under section 20 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third

violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(6) For a hazardous occupation violation under section 25 **or 25.5** of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(7) For an age violation under section 21 or 21.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(8) For each minor employed in violation of section 21(b) of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(9) For each violation of section 20.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(b) A civil penalty assessed under subsection (a):

(1) is subject to IC 4-21.5-3-6; and

(2) becomes effective without a proceeding under IC 4-21.5-3 unless a person requests an administrative review not later than thirty (30) days after notice of the assessment is given.

(c) For purposes of determining whether a second violation has occurred when assessing a civil penalty under subsection (a), a first violation expires one (1) year after the date of issuance of a warning letter by the department of labor under subsection (a).

(d) For purposes of determining recurring violations of this section, each location of an employer shall be considered separate and distinct from another location of the same employer.

(e) There is established an employment of youth fund for the purpose of educating affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. One-half (1/2) of the fund each year shall be used for the purpose of the education provision of this subsection. This portion of the fund may be used to award grants to provide educational programs. The remaining one-half (1/2) of the fund shall be used each year for the expenses of hiring and salaries of additional inspectors to enforce this chapter under section 29 of this chapter. All inspectors hired to enforce this chapter shall also be available to educate affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. The fund shall be administered by the department of labor. The expenses of administering the fund shall be paid from money in the fund. The treasurer of state shall invest the money in the fund not

currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a state fiscal year does not revert to the state general fund. Revenue received from civil penalties under this section shall be deposited in the employment of youth fund.

SECTION 4. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer and every employee, except as stated in IC 22-3-2 through IC 22-3-6, shall comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby, **except as provided in section 2.6 of this chapter.**

(b) IC 22-3-2 through IC 22-3-6 does not apply to railroad employees engaged in train service as:

(1) engineers;
(2) firemen;
(3) conductors;
(4) brakemen;
(5) flagmen;
(6) baggagemen; or
(7) foremen in charge of yard engines and helpers assigned thereto.

(c) IC 22-3-2 through IC 22-3-6 does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of any such municipality; and
(2) a firefighters' pension fund or of a police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure said employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(d) When any municipal corporation purchases or procures worker's compensation insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund, and pays the premium or premiums for such insurance, the payment of such premiums is a legal and allowable expenditure of funds of any municipal corporation.

(e) Except as provided in subsection (f), where the common council has procured worker's compensation insurance under this section, any member of such fire department or police department employed in the city carrying such worker's compensation insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that such services are provided for in the worker's compensation policy procured by such city, and shall not also recover in addition to that policy for such same benefits provided in IC 36-8-4.

(f) If the medical benefits provided under a worker's compensation policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(g) The provisions of IC 22-3-2 through IC 22-3-6 apply to:

(1) members of the Indiana general assembly; and

(2) field examiners of the state board of accounts.

SECTION 5. IC 22-3-2-2.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 2.6. (a) In addition to section 2 of this chapter, in the event of a terrorist attack (as determined by the worker's compensation board) every employer shall pay and every employee shall accept compensation for injury or death occurring while:**

(1) the employee was engaged in the duties of employment at the time of the terrorist attack; or

(2) the employee was traveling to or from the place of employment whether or not during working hours, and:

(A) had reached the employer's premises;

(B) had reached the area where the employee parks a motor vehicle; or

(C) was in such close proximity to the place of employment as to be injured or killed as a result of a terrorist attack that directly involved the employer's premises or adjacent areas, including, but not limited to, adjacent travel routes and parking garages.

(b) Section 2 of this chapter and subsection (a) apply regardless of:

(1) whether the employee's activities were a benefit to the employer at the time of the terrorist attack; or

(2) whether the terrorist act occurred during the employee's:

(A) lunch; or

(B) rest;

period.

SECTION 6. IC 22-3-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. **(a)** No compensation is allowed for an injury or death due to the employee's:

(1) knowingly self-inflicted injury;

(2) ~~his~~ intoxication;

(3) ~~his~~ commission of an offense; ~~his knowing failure to use a safety appliance,~~;

(4) ~~his~~ knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work **other than an order or regulation set forth in subsection (b)(2);** or

(5) ~~his~~ knowing failure to perform any statutory duty.

The burden of proof is on the defendant.

(b) This subsection does not apply to compensation due to a school to work student under section 2.5(b)(2) of this chapter. Each payment of monetary compensation allowed under IC 22-3-3-8, IC 22-3-3-9, IC 22-3-3-10, IC 22-3-3-21, or IC 22-3-3-22 shall be reduced by fifteen percent (15%) for an injury or a death caused in any degree by the employee's intentional:

(1) failure to use a safety appliance furnished by the employer or required by the employer to be used by the employee; or

(2) failure to obey a lawful order or administrative regulation issued by:

(A) the worker's compensation board; or

(B) the employer;

for the safety of the employees or the public.

SECTION 7. IC 22-3-6-1, AS AMENDED BY P.L.202-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and

IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5.

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a municipal corporation or governmental subdivision or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation under IC 22-3-2 through IC 22-3-6.

(2) An executive officer of a municipal corporation or other governmental subdivision or of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an

independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or

manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is:

(A) a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25; **or**

(B) a child less than eighteen (18) years of age who, at the time of the accident, is permitted to work in violation of IC 20-8.1-4-25.5;

the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the

minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 8. IC 22-3-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer and every employee, except as stated in this chapter, shall comply with this chapter, requiring the employer and employee to pay and accept

compensation for disablement or death by occupational disease arising out of and in the course of the employment, and shall be bound thereby, **except as provided in section 10(c) of this chapter.**

(b) This chapter does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of any such municipality; and

(2) a firefighters' pension fund or a police officers' pension fund.

However, if the common council elects to purchase and procure worker's occupational disease insurance to insure said employees with respect to medical benefits under this chapter, the medical provisions apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(c) When any municipal corporation purchases or procures worker's occupational disease insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund and pays the premium or premiums for the insurance, the payment of the premiums is a legal and allowable expenditure of funds of any municipal corporation.

(d) Except as provided in subsection (e), where the common council has procured worker's occupational disease insurance as provided under this section, any member of the fire department or police department employed in the city carrying the worker's occupational disease insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that the services are provided for in the worker's occupational disease policy so procured by the city, and may not also recover in addition to that policy for the same benefits provided in IC 36-8-4.

(e) If the medical benefits provided under a worker's occupational disease policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(f) Nothing in this section affects the rights and liabilities of employees and employers had by them prior to April 1, 1963, under this chapter.

SECTION 9. IC 22-3-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) **Except as provided in subsection (c),** as used in this chapter, "occupational

disease" means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section.

(b) A disease arises out of the employment only if there is apparent to the rational mind, upon consideration of all of the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workers would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

(c) In addition to subsections (a) and (b), in the event of a terrorist attack (as determined by the worker's compensation board) every employer shall pay and every employee shall accept compensation for occupational disease or death by occupational disease occurring while:

(1) the employee was engaged in the duties of employment at the time of the terrorist attack; or

(2) the employee was traveling to or from the place of employment whether or not during working hours, and:

(A) had reached the employer's premises;

(B) had reached the area where the employee parks a motor vehicle; or

(C) was in such close proximity to the place of employment as to be injured or killed as a result of a terrorist attack that directly involved the employer's premises or adjacent areas, including, but not limited to, adjacent travel routes and parking garages.

(d) Section 2 of this chapter and subsection (a) apply regardless of:

(1) whether the employee's activities were a benefit to the employer at the time of the terrorist attack; or

(2) whether the terrorist act occurred during the employee's:

(A) lunch; or

(B) rest;

period.

SECTION 10. IC 22-3-7-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. (a) No compensation is allowed for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of accidental injury under chapters 2 through 6 of this article.

(b) No compensation is allowed for any disease or death knowingly self-inflicted by the employee, or due to:

(1) ~~his~~ intoxication;

(2) ~~his~~ commission of an offense; ~~his knowing failure to use a safety~~ appliance~~,~~;

(3) ~~his~~ knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work **other than an order or regulation set forth in subsection (c)(2);** or

(4) ~~his~~ knowing failure to perform any statutory duty.

The burden of proof is on the defendant.

(c) This subsection does not apply to compensation due to a school to work student under section 2.5(b)(2) of this chapter. Each payment of monetary compensation allowed under sections 11, 15, 16, and 19 of this chapter shall be reduced by fifteen percent (15%) for an occupational disease or a death resulting from an occupational disease caused in any degree by the employee's intentional:

(1) failure to use a safety appliance furnished by the employer or required by the employer to be used by the employee; or

(2) failure to obey a lawful order or administrative regulation issued by:

(A) the worker's compensation board; or

(B) the employer;

for the safety of the employees or the public.

SECTION 11. IC 22-4-15-1, AS AMENDED BY P.L.290-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause is ineligible for ~~waiting period or~~ benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to

or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of ~~his~~ **the individual's** current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. The maximum benefit amount may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions; and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for

compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

(A) the employment was outside the individual's labor market;

(B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and

(C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

(8) An individual who is an affected employee (as defined in IC 22-4-43-1(1)) and is subject to the work sharing unemployment insurance program under IC 22-4-43 is not disqualified from participating in the work sharing unemployment insurance program for being an affected

employee.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

(1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;

(2) knowing violation of a reasonable and uniformly enforced rule of an employer;

(3) unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;

(4) damaging the employer's property through willful negligence;

(5) refusing to obey instructions;

(6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;

(7) conduct endangering safety of self or coworkers; or

(8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction or for any breach of duty in connection with work which is reasonably owed an employer by an employee.

SECTION 12. IC 22-4-43 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 43. Work Sharing

Sec. 1. The following definitions apply throughout this chapter:

(1) "Affected employee" means an individual who has been continuously on the payroll of an affected unit for at least three (3) months before the employing unit submits a work sharing plan.

(2) "Affected unit" means a specific plant, department, shift, or other definable unit of an employing unit:

(A) that has at least two (2) employees; and

(B) to which an approved work sharing plan applies.

(3) "Approved work sharing plan" means a plan that satisfies the purpose set forth in section 2 of this chapter and has the approval of the commissioner.

(4) "Commissioner" means the commissioner of workforce

development appointed under IC 22-4.1-3-1.

(5) "Employee association" means:

(A) an association that is a party to a collective bargaining agreement under which it may negotiate a work sharing plan; or

(B) an association authorized by all of its members to become a party to a work sharing plan.

(6) "Normal weekly work hours" means the lesser of:

(A) the number of hours in a week that an employee customarily works for the regular employing unit; or

(B) forty (40) hours.

(7) "Work sharing benefit" means benefits payable to an affected employee for work performed under an approved work sharing plan, including benefits payable to a federal civilian employee or former member of the armed forces under 5 U.S.C. 8500 et seq., but does not include benefits that are otherwise payable under this article.

(8) "Work sharing employer" means an employing unit or employer association for which a work sharing plan has been approved.

(9) "Work sharing plan" means a plan of an employing unit or employer association under which:

(A) normal weekly work hours of affected employees are reduced; and

(B) affected employees share the work that remains after the reduction.

Sec. 2. The work sharing unemployment insurance program seeks to:

(1) preserve the jobs of employees and the work force of an employer during lowered economic activity by reduction in work hours or workdays rather than by a layoff of some employees while other employees continue their normal weekly work hours or workdays; and

(2) ameliorate the adverse effect of reduction in business activity by providing benefits for the part of the normal weekly work hours or workdays in which an employee does not work.

Sec. 3. An employing unit or employee association that wishes to participate in the work sharing unemployment insurance program shall submit to the commissioner a written work sharing plan that the employing unit or representative of the employee association has signed.

Sec. 4. (a) Within fifteen (15) days after receipt of a work sharing plan, the commissioner shall give written approval or disapproval of the plan to the employing unit or employee association.

(b) The decision of the commissioner to disapprove a work sharing plan is final and may not be appealed.

(c) An employing unit or employee association may submit a new work sharing plan not less than fifteen (15) days after disapproval of a work sharing plan.

Sec. 5. The commissioner shall approve a work sharing plan that meets the following requirements:

(1) The work sharing plan must apply to:

(A) at least ten percent (10%) of the employees in an affected unit; or

(B) at least twenty (20) employees in an affected unit in which the work sharing plan applies equally to all affected employees.

(2) The normal weekly work hours of affected employees in the affected unit shall be reduced by at least ten percent (10%) but the reduction may not exceed fifty percent (50%) unless the fifty percent (50%) limit is waived by the commissioner.

Sec. 6. A work sharing plan must:

(1) identify the affected unit;

(2) identify each employee in the affected unit by:

(A) name;

(B) Social Security number; and

(C) any other information that the commissioner requires;

(3) specify an expiration date that is not more than six (6) months after the effective date of the work sharing plan;

(4) specify the effect that the work sharing plan will have on the fringe benefits of each employee in the affected unit, including:

(A) health insurance for hospital, medical, dental, and similar services;

(B) retirement benefits under benefit pension plans as defined in the federal Employee Retirement Security Act (29 U.S.C. 1001 et seq.);

(C) holiday and vacation pay;

(D) sick leave; and

(E) similar advantages;

(5) certify that:

(A) each affected employee has been continuously on the payroll of the employing unit for three (3) months immediately before the date on which the employing unit or employer association submits the work sharing plan; and

(B) the total reduction in normal weekly work hours is in place of layoffs that would have:

(i) affected at least the number of employees specified in section 5(1) of this chapter; and

(ii) would have resulted in an equivalent reduction in work hours; and

(6) contain the written approval of:

(A) the collective bargaining agent for each collective bargaining agreement that covers any affected employee in the affected unit; or

(B) if there is not an agent, a representative of the employees or employee association in the affected unit.

Sec. 7. If a work sharing plan serves the work sharing employer as a transitional step to permanent staff reduction, the work sharing plan must contain a reemployment assistance plan for each affected employee that the work sharing employer develops with the commissioner.

Sec. 8. The work sharing employer shall agree to:

(1) submit reports that are necessary to administer the work sharing plan; and

(2) allow the department to have access to all records necessary to:

(A) verify the work sharing plan before its approval; and

(B) monitor and evaluate the application of the work sharing plan after its approval.

Sec. 9. (a) An approved work sharing plan may be modified if the modification meets the requirements for approval under section 6 of this chapter and the commissioner approves the modifications.

(b) An employing unit may add an employee to a work sharing plan when the employee has been continuously on the payroll for three (3) months.

(c) An approved modification of a work sharing plan may not change its expiration date.

Sec. 10. (a) An affected employee is eligible under section 12 of this chapter to receive work sharing benefits for each week in which the commissioner determines that the affected employee is:

(1) able to work; and

(2) available for more hours of work or full-time work for the worksharing employer.

(b) An affected employee who otherwise is eligible may not be denied work sharing benefits for lack of effort to secure work as set forth in IC 22-4-14-3 or for failure to apply for available suitable work as set forth in IC 22-4-15-2 from a person other than the work sharing employer.

(c) An affected employee shall apply for benefits under IC 22-4-17-1.

(d) An affected employee who otherwise is eligible for benefits is:

(1) considered to be unemployed for the purpose of the work sharing unemployment insurance program; and

(2) not subject to the requirements of IC 22-4-14-2.

Sec. 11. The weekly work sharing unemployment compensation benefit due to an affected worker is determined in STEP FOUR of the following formula:

STEP ONE: Determine the weekly benefit that would be due to the affected employee under IC 22-4-12-4.

STEP TWO: Determine the percentage of reduction in the employee's normal work hours as to those under the approved work sharing plan.

STEP THREE: Multiply the number determined in STEP ONE by the quotient determined in STEP TWO.

STEP FOUR: If the product determined under STEP THREE is not a multiple of one dollar ($1), round down to the nearest lower multiple of one dollar ($1).

Sec. 12. (a) An affected employee is eligible to receive not more than twenty-six (26) weeks of work sharing benefits during each benefit year.

(b) The total amount of benefits payable under IC 22-4-12-4 and work sharing benefits payable under this chapter may not exceed the total payable for the benefit year under IC 22-4-12-4(a).

Sec. 13. The board shall adopt rules under IC 4-22-2 applicable to partially unemployed workers for determining their weekly benefit amount due under this chapter, subject to IC 22-4-12-5(b).

Sec. 14. During a week in which an affected employee who otherwise is eligible for benefits does not work for the work sharing employer:

(1) the individual shall be paid benefits in accordance with this chapter; and

(2) the week does not count as a week for which a work sharing benefit is received.

Sec. 15. During a week in which an employee earns wages under an approved work sharing plan and other wages, the work sharing benefit shall be reduced by the same percentage that the combined wages are of wages for normal weekly work hours if the other wages:

(1) exceed the wages earned under the approved work sharing plan; and

(2) do not exceed ninety percent (90%) of the wages that the individual earns for normal weekly work hours.

This computation applies regardless of whether the employee earned the other wage from the work sharing employer or other employer.

Sec. 16. While an affected employee applies for or receives work sharing benefits, the affected employee is not eligible for:

(1) extended benefits under IC 22-4-12-4; or

(2) supplemental federal unemployment compensation.

Sec. 17. The commissioner may revoke approval of an approved work sharing plan for good cause, including:

(1) conduct or an occurrence that tends to defeat the intent and effective operation of the approved work sharing plan;

(2) failure to comply with an assurance in the approved work sharing plan;

(3) unreasonable revision of a productivity standard of the affected unit; and

(4) violation of a criterion on which the commissioner based the approval of the work sharing plan.

SECTION 13. [EFFECTIVE JULY 1, 2002] **(a) Notwithstanding IC 22-4-43-13, as added by this act, the unemployment insurance board shall carry out the duties imposed upon it under IC 22-4-43-13, as added by this act, under interim written guidelines approved by the commissioner of workforce development.**

(b) This SECTION expires on the earlier of the following:

(1) The date rules are adopted under IC 22-4-43-13, as added by this act.

(2) December 31, 2003.

SECTION 14. **An emergency is declared for this act.**

COMMITTEE REPORT

Mr. President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 71, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 71 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 9, Nays 1.

SENATE MOTION

Mr. President: I move that Senate Bill 71 be amended to read as follows:

Page 2, line 1, after "provide" strike "a" and insert "**one (1) or more**".

Page 2, line 2, strike "break of" and insert "**breaks totaling**".

Page 2, line 3, strike "six (6)" and insert "**eight (8)**".

Page 2, strike lines 4 through 6.

Page 2, after line 6, begin a new paragraph and insert:

"SECTION 2. **An emergency is declared for this act.**"

(Reference is to SB 71 as printed January 29, 2002.)

HARRISON

COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred Senate Bill 71, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, strike lines 9 through 15.

Page 1, line 16, strike "(3) is operated by a nonprofit".

Page 1, line 16, delete "entity," and insert "~~entity.~~".

Page 1, line 16, delete "a municipality (as defined".

Page 1, delete line 17.

Page 1, line 18, strike "(c)" and insert "**(b)**".

Page 2, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 2. IC 20-8.1-4-25.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 25.5. (a) This section does not provide an exception to the hours a child is permitted to work under section 20 of this chapter.**

(b) It is unlawful for a person, firm, limited liability company, or corporation to permit a child who is:

(1) less than eighteen (18) years of age; and

(2) employed by the person, firm, limited liability company, or corporation;

to work after 10 p.m. and before 6 a.m. in an establishment that is open to the public unless another employee at least eighteen (18) years of age also works in the establishment during the same hours as the child.

SECTION 3. IC 20-8.1-4-31, AS AMENDED BY P.L.122-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. (a) A person, firm, limited liability company, or corporation that violates this chapter may be assessed the following civil penalties by the department of labor:

(1) For an employment certificate violation under section 1 or 13 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars ($50) per instance for a second violation identified in a subsequent inspection.

(C) Seventy-five dollars ($75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars ($100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection

under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars ($50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars ($75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars ($100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(3) For a termination notice violation under section 11 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars ($50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars ($75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars ($100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(4) For an hour violation of not more than thirty (30) minutes under section 20 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars ($50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars ($75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars ($100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(5) For an hour violation of more than thirty (30) minutes under

section 20 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(6) For a hazardous occupation violation under section 25 **or 25.5** of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(7) For an age violation under section 21 or 21.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(8) For each minor employed in violation of section 21(b) of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(9) For each violation of section 20.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars ($100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars ($200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars ($400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(b) A civil penalty assessed under subsection (a):

(1) is subject to IC 4-21.5-3-6; and

(2) becomes effective without a proceeding under IC 4-21.5-3 unless a person requests an administrative review not later than thirty (30) days after notice of the assessment is given.

(c) For purposes of determining whether a second violation has occurred when assessing a civil penalty under subsection (a), a first violation expires one (1) year after the date of issuance of a warning letter by the department of labor under subsection (a).

(d) For purposes of determining recurring violations of this section, each location of an employer shall be considered separate and distinct from another location of the same employer.

(e) There is established an employment of youth fund for the purpose of educating affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. One-half (1/2) of the fund each year shall be used for the purpose of the education provision of this subsection. This portion of the fund may be used to award grants to provide educational programs. The remaining one-half (1/2) of the fund shall be used each year for the expenses of hiring and salaries of additional inspectors to enforce this chapter under

section 29 of this chapter. All inspectors hired to enforce this chapter shall also be available to educate affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. The fund shall be administered by the department of labor. The expenses of administering the fund shall be paid from money in the fund. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a state fiscal year does not revert to the state general fund. Revenue received from civil penalties under this section shall be deposited in the employment of youth fund.

SECTION 4. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer and every employee, except as stated in IC 22-3-2 through IC 22-3-6, shall comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby, **except as provided in section 2.6 of this chapter.**

(b) IC 22-3-2 through IC 22-3-6 does not apply to railroad employees engaged in train service as:

(1) engineers;
(2) firemen;
(3) conductors;
(4) brakemen;
(5) flagmen;
(6) baggagemen; or
(7) foremen in charge of yard engines and helpers assigned thereto.

(c) IC 22-3-2 through IC 22-3-6 does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of any such municipality; and
(2) a firefighters' pension fund or of a police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure said employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(d) When any municipal corporation purchases or procures worker's compensation insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund, and pays the premium or premiums for such insurance, the payment of such premiums is a legal and allowable expenditure of funds of any municipal corporation.

(e) Except as provided in subsection (f), where the common council has procured worker's compensation insurance under this section, any member of such fire department or police department employed in the city carrying such worker's compensation insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that such services are provided for in the worker's compensation policy procured by such city, and shall not also recover in addition to that policy for such same benefits provided in IC 36-8-4.

(f) If the medical benefits provided under a worker's compensation policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(g) The provisions of IC 22-3-2 through IC 22-3-6 apply to:

(1) members of the Indiana general assembly; and

(2) field examiners of the state board of accounts.

SECTION 5. IC 22-3-2-2.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 2.6. (a) In addition to section 2 of this chapter, in the event of a terrorist attack (as determined by the worker's compensation board) every employer shall pay and every employee shall accept compensation for injury or death occurring while:**

(1) the employee was engaged in the duties of employment at the time of the terrorist attack; or

(2) the employee was traveling to or from the place of employment whether or not during working hours, and:

(A) had reached the employer's premises;

(B) had reached the area where the employee parks a motor vehicle; or

(C) was in such close proximity to the place of employment as to be injured or killed as a result of a terrorist attack that directly involved the employer's premises or adjacent areas, including, but not limited to, adjacent travel routes and parking garages.

(b) Section 2 of this chapter and subsection (a) apply regardless of:

(1) whether the employee's activities were a benefit to the employer at the time of the terrorist attack; or

(2) whether the terrorist act occurred during the employee's:

(A) lunch; or

(B) rest;

period.

SECTION 6. IC 22-3-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. **(a)** No compensation is allowed for an injury or death due to the employee's:

(1) knowingly self-inflicted injury;

(2) ~~his~~ intoxication;

(3) ~~his~~ commission of an offense; ~~his knowing failure to use a safety appliance,~~

(4) ~~his~~ knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work **other than an order or regulation set forth in subsection (b)(2);** or

(5) ~~his~~ knowing failure to perform any statutory duty.

The burden of proof is on the defendant.

(b) This subsection does not apply to compensation due to a school to work student under section 2.5(b)(2) of this chapter. Each payment of monetary compensation allowed under IC 22-3-3-8, IC 22-3-3-9, IC 22-3-3-10, IC 22-3-3-21, or IC 22-3-3-22 shall be reduced by fifteen percent (15%) for an injury or a death caused in any degree by the employee's intentional:

(1) failure to use a safety appliance furnished by the employer or required by the employer to be used by the employee; or

(2) failure to obey a lawful order or administrative regulation issued by:

(A) the worker's compensation board; or

(B) the employer;

for the safety of the employees or the public.

SECTION 7. IC 22-3-6-1, AS AMENDED BY P.L.202-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same,

using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5.

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a municipal corporation or governmental subdivision or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation under IC 22-3-2 through IC 22-3-6.

(2) An executive officer of a municipal corporation or other governmental subdivision or of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the

owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate

the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is:

(A) a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25; **or**

(B) a child less than eighteen (18) years of age who, at the time of the accident, is permitted to work in violation of IC 20-8.1-4-25.5;

the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation

for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training

program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or

less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 8. IC 22-3-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer and every employee, except as stated in this chapter, shall comply with this chapter, requiring the employer and employee to pay and accept compensation for disablement or death by occupational disease arising out of and in the course of the employment, and shall be bound thereby, **except as provided in section 10(c) of this chapter.**

(b) This chapter does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of any such municipality; and

(2) a firefighters' pension fund or a police officers' pension fund.

However, if the common council elects to purchase and procure worker's occupational disease insurance to insure said employees with respect to medical benefits under this chapter, the medical provisions apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(c) When any municipal corporation purchases or procures worker's occupational disease insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund and pays the premium or premiums for the insurance, the payment of the premiums is a legal and allowable expenditure of funds of any municipal corporation.

(d) Except as provided in subsection (e), where the common council has procured worker's occupational disease insurance as provided under this section, any member of the fire department or police department employed in the city carrying the worker's occupational disease insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that the services are provided for in the worker's occupational disease policy so procured by the city, and may not also recover in addition to that policy for the same benefits provided in IC 36-8-4.

(e) If the medical benefits provided under a worker's occupational disease policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(f) Nothing in this section affects the rights and liabilities of employees and employers had by them prior to April 1, 1963, under this chapter.

SECTION 9. IC 22-3-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) **Except as provided in subsection (c),** as used in this chapter, "occupational disease" means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section.

(b) A disease arises out of the employment only if there is apparent to the rational mind, upon consideration of all of the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workers would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

(c) In addition to subsections (a) and (b), in the event of a terrorist attack (as determined by the worker's compensation board) every employer shall pay and every employee shall accept compensation for occupational disease or death by occupational disease occurring while:

(1) the employee was engaged in the duties of employment at the time of the terrorist attack; or

(2) the employee was traveling to or from the place of employment whether or not during working hours, and:

(A) had reached the employer's premises;

(B) had reached the area where the employee parks a motor vehicle; or

(C) was in such close proximity to the place of employment as to be injured or killed as a result of a terrorist attack that directly involved the employer's premises or adjacent areas, including, but not limited to, adjacent travel routes and parking garages.

(d) Section 2 of this chapter and subsection (a) apply regardless of:

(1) whether the employee's activities were a benefit to the employer at the time of the terrorist attack; or

(2) whether the terrorist act occurred during the employee's:

(A) lunch; or

(B) rest;

period.

SECTION 10. IC 22-3-7-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. (a) No compensation is allowed for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of accidental injury under chapters 2 through 6 of this article.

(b) No compensation is allowed for any disease or death knowingly self-inflicted by the employee, or due to:

(1) ~~his~~ intoxication;

(2) ~~his~~ commission of an offense; ~~his knowing failure to use a safety appliance,~~;

(3) ~~his~~ knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work **other than an order or regulation set forth in subsection (c)(2);** or

(4) ~~his~~ knowing failure to perform any statutory duty.

The burden of proof is on the defendant.

(c) This subsection does not apply to compensation due to a school to work student under section 2.5(b)(2) of this chapter. Each payment of monetary compensation allowed under sections 11, 15, 16, and 19 of this chapter shall be reduced by fifteen percent (15%) for an occupational disease or a death resulting from an occupational disease caused in any degree by the employee's intentional:

(1) failure to use a safety appliance furnished by the employer or required by the employer to be used by the employee; or

(2) failure to obey a lawful order or administrative regulation issued by:

(A) the worker's compensation board; or

(B) the employer;

for the safety of the employees or the public.

SECTION 11. IC 22-4-15-1, AS AMENDED BY P.L.290-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) With respect to benefit periods established

on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause is ineligible for ~~waiting period or~~ benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of ~~his~~ **the individual's** current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. The maximum benefit amount may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions; and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the

United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

(A) the employment was outside the individual's labor market;

(B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and

(C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from

whom the spouse voluntarily separated.

(8) An individual who is an affected employee (as defined in IC 22-4-43-1(1)) and is subject to the work sharing unemployment insurance program under IC 22-4-43 is not disqualified from participating in the work sharing unemployment insurance program for being an affected employee.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

(1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;

(2) knowing violation of a reasonable and uniformly enforced rule of an employer;

(3) unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;

(4) damaging the employer's property through willful negligence;

(5) refusing to obey instructions;

(6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;

(7) conduct endangering safety of self or coworkers; or

(8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction or for any breach of duty in connection with work which is reasonably owed an employer by an employee.

SECTION 12. IC 22-4-43 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 43. Work Sharing

Sec. 1. The following definitions apply throughout this chapter:

(1) "Affected employee" means an individual who has been continuously on the payroll of an affected unit for at least three (3) months before the employing unit submits a work sharing plan.

(2) "Affected unit" means a specific plant, department, shift, or other definable unit of an employing unit:

(A) that has at least two (2) employees; and

(B) to which an approved work sharing plan applies.

(3) "Approved work sharing plan" means a plan that satisfies the purpose set forth in section 2 of this chapter and has the approval of the commissioner.

(4) "Commissioner" means the commissioner of workforce development appointed under IC 22-4.1-3-1.

(5) "Employee association" means:

(A) an association that is a party to a collective bargaining agreement under which it may negotiate a work sharing plan; or

(B) an association authorized by all of its members to become a party to a work sharing plan.

(6) "Normal weekly work hours" means the lesser of:

(A) the number of hours in a week that an employee customarily works for the regular employing unit; or

(B) forty (40) hours.

(7) "Work sharing benefit" means benefits payable to an affected employee for work performed under an approved work sharing plan, including benefits payable to a federal civilian employee or former member of the armed forces under 5 U.S.C. 8500 et seq., but does not include benefits that are otherwise payable under this article.

(8) "Work sharing employer" means an employing unit or employer association for which a work sharing plan has been approved.

(9) "Work sharing plan" means a plan of an employing unit or employer association under which:

(A) normal weekly work hours of affected employees are reduced; and

(B) affected employees share the work that remains after the reduction.

Sec. 2. The work sharing unemployment insurance program seeks to:

(1) preserve the jobs of employees and the work force of an employer during lowered economic activity by reduction in work hours or workdays rather than by a layoff of some employees while other employees continue their normal weekly work hours or workdays; and

(2) ameliorate the adverse effect of reduction in business activity by providing benefits for the part of the normal weekly work hours or workdays in which an employee does

not work.

Sec. 3. An employing unit or employee association that wishes to participate in the work sharing unemployment insurance program shall submit to the commissioner a written work sharing plan that the employing unit or representative of the employee association has signed.

Sec. 4. (a) Within fifteen (15) days after receipt of a work sharing plan, the commissioner shall give written approval or disapproval of the plan to the employing unit or employee association.

(b) The decision of the commissioner to disapprove a work sharing plan is final and may not be appealed.

(c) An employing unit or employee association may submit a new work sharing plan not less than fifteen (15) days after disapproval of a work sharing plan.

Sec. 5. The commissioner shall approve a work sharing plan that meets the following requirements:

(1) The work sharing plan must apply to:

(A) at least ten percent (10%) of the employees in an affected unit; or

(B) at least twenty (20) employees in an affected unit in which the work sharing plan applies equally to all affected employees.

(2) The normal weekly work hours of affected employees in the affected unit shall be reduced by at least ten percent (10%) but the reduction may not exceed fifty percent (50%) unless the fifty percent (50%) limit is waived by the commissioner.

Sec. 6. A work sharing plan must:

(1) identify the affected unit;

(2) identify each employee in the affected unit by:

(A) name;

(B) Social Security number; and

(C) any other information that the commissioner requires;

(3) specify an expiration date that is not more than six (6) months after the effective date of the work sharing plan;

(4) specify the effect that the work sharing plan will have on the fringe benefits of each employee in the affected unit, including:

(A) health insurance for hospital, medical, dental, and similar services;

(B) retirement benefits under benefit pension plans as

defined in the federal Employee Retirement Security Act (29 U.S.C. 1001 et seq.);

(C) holiday and vacation pay;

(D) sick leave; and

(E) similar advantages;

(5) certify that:

(A) each affected employee has been continuously on the payroll of the employing unit for three (3) months immediately before the date on which the employing unit or employer association submits the work sharing plan; and

(B) the total reduction in normal weekly work hours is in place of layoffs that would have:

(i) affected at least the number of employees specified in section 5(1) of this chapter; and

(ii) would have resulted in an equivalent reduction in work hours; and

(6) contain the written approval of:

(A) the collective bargaining agent for each collective bargaining agreement that covers any affected employee in the affected unit; or

(B) if there is not an agent, a representative of the employees or employee association in the affected unit.

Sec. 7. If a work sharing plan serves the work sharing employer as a transitional step to permanent staff reduction, the work sharing plan must contain a reemployment assistance plan for each affected employee that the work sharing employer develops with the commissioner.

Sec. 8. The work sharing employer shall agree to:

(1) submit reports that are necessary to administer the work sharing plan; and

(2) allow the department to have access to all records necessary to:

(A) verify the work sharing plan before its approval; and

(B) monitor and evaluate the application of the work sharing plan after its approval.

Sec. 9. (a) An approved work sharing plan may be modified if the modification meets the requirements for approval under section 6 of this chapter and the commissioner approves the modifications.

(b) An employing unit may add an employee to a work sharing plan when the employee has been continuously on the payroll for

three (3) months.

(c) An approved modification of a work sharing plan may not change its expiration date.

Sec. 10. (a) An affected employee is eligible under section 12 of this chapter to receive work sharing benefits for each week in which the commissioner determines that the affected employee is:

(1) able to work; and

(2) available for more hours of work or full-time work for the worksharing employer.

(b) An affected employee who otherwise is eligible may not be denied work sharing benefits for lack of effort to secure work as set forth in IC 22-4-14-3 or for failure to apply for available suitable work as set forth in IC 22-4-15-2 from a person other than the work sharing employer.

(c) An affected employee shall apply for benefits under IC 22-4-17-1.

(d) An affected employee who otherwise is eligible for benefits is:

(1) considered to be unemployed for the purpose of the work sharing unemployment insurance program; and

(2) not subject to the requirements of IC 22-4-14-2.

Sec. 11. The weekly work sharing unemployment compensation benefit due to an affected worker is determined in STEP FOUR of the following formula:

STEP ONE: Determine the weekly benefit that would be due to the affected employee under IC 22-4-12-4.

STEP TWO: Determine the percentage of reduction in the employee's normal work hours as to those under the approved work sharing plan.

STEP THREE: Multiply the number determined in STEP ONE by the quotient determined in STEP TWO.

STEP FOUR: If the product determined under STEP THREE is not a multiple of one dollar ($1), round down to the nearest lower multiple of one dollar ($1).

Sec. 12. (a) An affected employee is eligible to receive not more than twenty-six (26) weeks of work sharing benefits during each benefit year.

(b) The total amount of benefits payable under IC 22-4-12-4 and work sharing benefits payable under this chapter may not exceed the total payable for the benefit year under IC 22-4-12-4(a).

Sec. 13. The board shall adopt rules under IC 4-22-2 applicable to partially unemployed workers for determining their weekly

benefit amount due under this chapter, subject to IC 22-4-12-5(b).

Sec. 14. During a week in which an affected employee who otherwise is eligible for benefits does not work for the work sharing employer:

(1) the individual shall be paid benefits in accordance with this chapter; and

(2) the week does not count as a week for which a work sharing benefit is received.

Sec. 15. During a week in which an employee earns wages under an approved work sharing plan and other wages, the work sharing benefit shall be reduced by the same percentage that the combined wages are of wages for normal weekly work hours if the other wages:

(1) exceed the wages earned under the approved work sharing plan; and

(2) do not exceed ninety percent (90%) of the wages that the individual earns for normal weekly work hours.

This computation applies regardless of whether the employee earned the other wage from the work sharing employer or other employer.

Sec. 16. While an affected employee applies for or receives work sharing benefits, the affected employee is not eligible for:

(1) extended benefits under IC 22-4-12-4; or

(2) supplemental federal unemployment compensation.

Sec. 17. The commissioner may revoke approval of an approved work sharing plan for good cause, including:

(1) conduct or an occurrence that tends to defeat the intent and effective operation of the approved work sharing plan;

(2) failure to comply with an assurance in the approved work sharing plan;

(3) unreasonable revision of a productivity standard of the affected unit; and

(4) violation of a criterion on which the commissioner based the approval of the work sharing plan.

SECTION 13. [EFFECTIVE JULY 1, 2002] **(a) Notwithstanding IC 22-4-43-13, as added by this act, the unemployment insurance board shall carry out the duties imposed upon it under IC 22-4-43-13, as added by this act, under interim written guidelines approved by the commissioner of workforce development.**

(b) This SECTION expires on the earlier of the following:

(1) The date rules are adopted under IC 22-4-43-13, as added

by this act.

(2) December 31, 2003.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 71 as reprinted February 4, 2002.)

LIGGETT, Chair

Committee Vote: yeas 12, nays 1.